



**NASA**  
**Procedural**  
**Requirements**

**COMPLIANCE IS MANDATORY**

**NPR 9050.5**

Effective Date: September 30,  
2008

Expiration Date: September  
30, 2013

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## Cash Management for Contracts

**Responsible Office: Office of the Chief Financial Officer**

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# Preface

## P.1 Purpose

This NASA Procedural Requirements (NPR) provides the financial management requirements for Contract Financial Management.

## P.2 Applicability

This NPR is applicable to NASA Headquarters and NASA Centers, including Component Facilities and Technical and Service Support Centers. This language applies to JPL, other contractors, grant recipients, or parties to agreements only to the extent specified or referenced in the appropriate contracts, grants, or agreements.

## P.3 Authority

- a. 28 U.S.C. § 2415, Time for Commencing Actions Brought by the United States
- b. 41 U.S.C. §15 and 31 U. S. C. § 3727, Assignment of Claims Act, ,
- c. Contractor Disputes Act of 1978, Public Law 95-563 (50 U.S.C. § 1431 -1435)
- d. Debt Collection Improvement Act of 1996, Public Law 104-134, and the revised Federal Claims Collection Standards Regulation of 2000
- e. Improper Payments Information Act of 2002, Public Law 107-300
- f. Office of Federal Procurement Policy Act of 1974, Public Law 93-400, as amended by Public Law 96-83
- g. Collections by Administrative Offset, 31 Code of Federal Regulations (CFR) Part 901.3
- h. Management of Federal Agency Disbursements, 31 CFR § 208
- i. Prompt Payment Act, 5 CFR § 1315
- j. 21 Comptroller General Procedures (Comp. Gen) 719 (1942)
- k. Comp. Gen. B-134654, Feb 11, 1958
- l. Comp. Gen. B-128346, Aug 8, 1956
- m. 37 Comp. Gen. 772 (1959),
- n. 32 Comp. Gen. 423 (1953)
- o. 24 Comp. Gen. 150 (1945)
- p. Federal Acquisition Regulation (FAR) 32.802
- q. Federal Acquisition Regulation (FAR), Subpart 29.2 Federal Excise Taxes, Subpart Part 29.3 State and Local Taxes
- r. FAR, Part 31, Contract Cost Principles and Procedures

- s. FAR Part 32, Contract Financing
- t. FAR Part 33.102(b), Protests, Disputes, and Appeals
- u. The Federal Claims Collection Standards (FCCS)
- v. Treasury Financial Manual (TFM) 4-2000. Payment Issue Disbursing Procedures
- w. Treasury Financial Management Regulations (TFM), Chapter 6-8000.
- x. NASA Policy Directive (NPD) 9010.2, "Financial Management"

## **P.4 Applicable Documents**

- a. National Aeronautics and Space Administration supplement to the Federal Acquisition Regulation, NASA FAR Supplement, Part 1832 - Contract Financing.

## **P.5 Measurement/Verification**

Quality assurance reviews and analysis of financial and budgetary reports and data submitted through the continuous monitoring program will be used to measure compliance with this NPR.

## **P.6 Cancellation**

None.

/S/

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NASA Deputy Chief Financial Officer

# Chapter 1. General Overview

## 1.1 Overview

1.1.1 This NPR covers National Aeronautics and Space Administration (NASA) policy and standard procedures associated with contract financial management to ensure that contracts with outside vendors are properly accounted for in accordance with relevant laws and regulations.

## 1.2 Agency Requirements

1.2.1 It is the policy of NASA to process contract payments, claims, and collections in accordance with the Federal Acquisition Regulations (FAR), the NASA FAR Supplement, and other applicable laws and regulations as provided within the NPR.

## 1.3 Roles and Responsibilities

1.3.1 NASA Agency Office of the Chief Financial Officer shall:

- a. Establish and maintain policies for the timely collection of contractor debt, payment of contractor invoices, and resolution of contractor claims.
- b. Monitor compliance with contract financial management policies.

1.3.2 NASA Center Office of the Chief Financial Officer shall:

- a. Ensure compliance with contract financial management policies.

1.3.3 NASA Shared Services Center shall:

- a. Record contractor debt collections, payments, and claims in accordance with contract financial management policy.

# Chapter 2. Contract Payment

## 2.1 Overview

2.1.1 This chapter sets forth policy, which governs examination, certification and payment of vouchers, invoices, contract financing requests, claims and other payment requests resulting from contracts. This chapter does not provide policy for grants or cooperative agreements.

## 2.2 Agency Requirements

2.2.1 It is the policy of National Aeronautics and Space Administration (NASA) to process contract payments in accordance with the provisions of contractual documents, the Federal Acquisition Regulation (FAR), the NASA FAR Supplement, and other applicable laws, and regulations as provided within this chapter.

2.2.2 NASA will maintain a financial management system that will keep contractors accounting records accurate and in balance from contract execution through closeout, and monitor the causes of late payments and interest penalties incurred.

## 2.3 Roles and Responsibilities

2.3.1 NASA Shared Services Center (NSSC):

- a. Maintains contract payment records.
- b. Examines contracts for information necessary for contract payment.
- c. Ensure that payments to contractors are processed timely and accurately.
- d. Determine that the invoice has been provisionally approved for payment by an agency representative that has been delegated such responsibility.

2.3.2 NASA Center Chief Financial Officer and Deputy Chief Financial Officer:

- a. Ensure that obligations and cost are recorded timely.
- b. Determine that cumulative costs claimed do not exceed the amount of obligations established and reserved to cover the estimated costs of the contract and modifications.

## 2.4 Documentation Requirements for Contract Payments

2.4.1 Purpose of Contract of Purchase Order. A contract or purchase order serves as documentation of legal obligation that is needed to make payments. The NSSC will maintain contract payment records for those contracts administered at the Center. Contract payment records shall be maintained the appropriate detail to facilitate the accounts payable process. FAR 4.803(c) provides the required contents of the paying office file. Additional payment record contents are provided in Appendix B.

- a. The NSSC examines invoices prior to payment to ensure that the expenditure is authorized by law or regulation and is in accordance with the terms of the applicable agreement. Entitlement or invoice payment includes applicable documentation such as proof of receipt and acceptance of goods or

services, receipt of a proper invoice, and verification of all computations. Receipt documentation, such as receiving reports, is maintained to document evidence of receipt of goods. Receiving reports must include, at a minimum, information as required in FAR 32.905(c). The documentation required for a proper invoice is provided in FAR 32.905(b).

b. The Fast Pay procedure allows payment prior to verification that supplies have been received and accepted, under the limited conditions listed in FAR 13.402. Post payment audits should confirm acceptance and receipt of supplies; and include matching payment documents with funds validation performed immediately before time of payment.

2.4.2 Lost or Destroyed Invoices. When the vendor states that an invoice has been submitted and payment has not been received, a duplicate copy of the original invoice must be obtained from the vendor. The invoice and invoice schedule will be processed through regular channels. Documentation must be maintained with the invoice that provides a full explanation or statement of all facts surrounding the loss or destruction of the original invoice; and a statement that steps have been taken to prevent duplicate payments. The documents must also be conspicuously marked duplicate original to prevent duplicate payment.

2.4.3 NASA Vendor Agreements. Invoices are not required when services of a recurring nature are performed under NASA-vendor agreements providing for payments in a definite amount and at a fixed periodic interval. In agreements, which permit payments of this type, appropriate internal controls will be instituted to ensure that the amounts paid are correct, and that appropriate steps have been taken to prevent duplicate payments. Supporting documentation must be readily available for use by NASA, Government Accountability Office, and audit representatives for DCAA or other agencies, which the responsibility for NASA contract audit has been delegated.

## 2.5 Invoice Processing

2.5.1 No payment is made without evidence of a liability and a determination of entitlement. The nature and extent of procedures vary for financing and invoice payments. Entitlement to financing payments shall be determined by contract terms and conditions, including any required approvals by contracting officers, contract administrators, or contract auditors. Entitlement to invoice payments shall include, as applicable, additional determinations such as proof of receipt and acceptance, receipt of a proper invoice, and verification of all computations.

2.5.2 Invoicing Discrepancies. Variances may exist between the amount claimed by the payee and the proper amount determined to be payable. NASA shall not alter the payee's name, address, quantity, or unit price of supplies and services stated on the invoices submitted. NASA may adjust the amount claimed, not to exceed \$100, when the claim is less than the full amount due, the payee intends to make a claim for the full amount, and evidence of the intended claim is documented.

a. If NASA receives goods in excess of the contractual amounts and the contract contains FAR clause 52.212-10, excess quantities up to \$250 may be accepted and retained by the government without payment to the contractor. Quantities in excess of \$250 shall either be returned at the contractor's expense or retained and paid for at the contract unit price. The contracting officer should be contacted and a contract modification must be issued to reflect the adjusted quantity when excess quantities are retained.

2.5.3 Advance and Progress Payments. Normally, the payment must not exceed the value of services or articles already received (31 U.S.C. § 3324). However, advance and progress payments are authorized by 10 U.S.C. § 2307. Policies regarding advance and progress payments are contained in FAR 32.4 and 32.5 and NASA FAR Subpart 1832.4 and 1832.5. These types of payments are considered contract financing, 5 CFR 1315, therefore they are not subject to Prompt Payment

regulations and interest penalties are not required.

2.5.4 Authorization to Pay. Administrative approval of an invoice payment may be accomplished electronically and should include: A) the date of actual receipt of the goods and services at the Center central receiving point or at the location specified in the ordering document unless additional acceptance requirements exist; and B) the date of acceptance and signature of the NASA official duly authorized to accept the goods and services on behalf of the Government. A receiving report may serve as an administrative approval.

2.5.5 Defense Contract Audit Agency (DCAA). The DCAA is commonly delegated authority to provisionally approve vouchers on NASA's cost-type contracts. Contractors approved by the DCAA to have adequate billing system internal controls, however, are authorized to submit interim vouchers (contract financing requests and fee vouchers) directly to NASA. Such authorization does not extend to the first and final voucher of a contract.

2.5.6 Assignment. A contractor may make an assignment of claims in accordance with FAR 32.8. Payments made to an assignee shall include, as a minimum, the name of the contractor and the contract number. The payee must be indicated as, for example, First National Bank, as Assignee of Jones, Miller and Company, 3rd and Erie Streets, Huntsville, Alabama.

a. All contracts will be reviewed to determine if payments have been assigned. If the contract has been effectively assigned, payments shall be made to the financial institution pertaining to the assignee, not the contractor/vendor. Payment of moneys due under a contract that has been assigned may not be made to the contractor unless the contract is supported by a properly executed release of assignment instrument.

# Chapter 3. Claims from Contractors

## 3.1 Overview

3.1.1.1 This chapter sets forth the policy relating to claims and assignment of claims of monies due, or to become due, under Government contracts.

## 3.2 Agency Requirements

3.2.1 NASA's policy is to promptly process claims received and provide payment if appropriate. Denial of claims and denial of the waiver of claims, are based on laws, statutes, Code of Federal Regulations, decisions of the Comptroller General or the Executive Branch agency out of whose activity the claim arose, and other legal written documentation.

## 3.3 Roles and Responsibilities

3.3.1 Agency. The Agency responsibility regarding the handling of claims is limited to the following areas.

- a. The Agency Chief Financial Officer (CFO) acts as the liaison between the responsible Government agency and the Center CFO, when claims cannot be disposed of administratively.
- b. The Agency CFO handles the development of vouchers, which are issued to the Centers for payment.

3.3.2 Centers. Center CFO and staff have primary responsibilities in the handling of claims.

- a. Centers are responsible for handling the initial claims that are received from the responsible Government agency. The Center CFO handles the disposing of claims administratively.
- b. Center CFO takes action for those claims that require adjudication by responsible Government agency.
- c. Center CFO is responsible for settling commercial accounts for which they have responsibility.
- d. Center CFO refers doubtful claims to the contracting officer with an explanation of the doubtful aspects.

3.3.3 NASA Shared Services Center (NSSC). The NSSC staff will process the approved payment of claims.

- a. The NSSC responsible for filing the claims that are received from the Center.
- b. The NSSC makes payment to assignees of claims after documentation has been received, reviewed, and approved.

3.3.4 Contracting Officer. The Contracting Officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

3.3.5 Office of Chief Counsel. Prior to settlement or payment, all claims shall be coordinated with the Office of Chief Counsel.

## 3.4 Civil Claims Against NASA

3.4.1 Filing requirements for claimants. NASA will consider claims presented in writing with the signature and address of the claimant or an authorized representative. All claims are filed through the responsible government agency depending on the type of claim filed, descriptions of each are found in the U.S.C. Title 31 Chapter 3702. A claim filed by a claimant's representative must be supported by a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the claimant. Initial claims will be filed by the claimant at the Center where the activities originally took place. If the claim cannot be administratively disposed of, it will be transmitted through the NASA Agency CFO to the responsible government agency. Claimants must be aware of the statutory limitations of filings claims and shall forward all disallowed claims directly to the responsible government agency.

3.4.2 Statutory time limitation for filing claims. Every claim against NASA (except a claim by a State, Territory, Possession, or the District of Columbia) that requires a determination by NASA must be submitted within 6 years from the date the claim accrued, unless otherwise provided for by law (28 U.S.C. § 2501). The responsible government agency will determine whether the claim has been made within the time prescribed by law. If the claim is not received by the responsible government agency within the statutory time period, it will be returned to the claimant and no further action will be deemed necessary. NASA Agency CFO will be notified of the action taken by the responsible government agency. All matters relating to claims will be handled promptly.

3.4.3 Non-receipt of check claims. Pursuant to 31 U.S.C. § 3702, a claim for non-receipt of a check which the records of the responsible government agency or the Department of the Treasury (Treasury) show as being paid must be presented to the responsible Government agency or the Treasury within 1 year after the date of issuance of the check. The claimant may present a claim directly to the Treasury or to the responsible government agency if the statutory period of limitation is about to expire. Since the Treasury has the paid check records and processes the related claims, the preferred procedure is to make the submission to the Treasury. A check claim that is received by a Center, which might be adversely affected by the 1-year limitation, should be immediately transmitted to the Treasury.

## 3.5 Claim Submission Requirements

3.5.1 Assistance to claimants. Pursuant to 18 U.S.C. § 205, a Government employee may neither assist nor act, on behalf of a claimant in prosecuting any claim against the United States other than in the proper discharge of official duties; and may not receive any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim.

3.5.2 False claims. When there are suspicions of fraud or irregularities regarding a claim either prior to payment or subsequent to payment, the Chief Counsel of the Center should be informed to determine appropriate action. Also, upon discovery of fraud or irregularities, the NASA Agency CFO and the NASA Office of Inspector General must be immediately notified by telephone and submission of a written notice.

3.5.3 Processing of claims by the responsible government agency. NASA's claims are submitted to the responsible government agency and are settled on the basis of the facts established by the Center and the written and documentary evidence submitted by the claimant. Settlements are determined by establishing the legal liability of NASA in the situation, supported by the written record only. The responsible Government agency will determine if a claim is allowed partially disallowed or wholly

disallowed (28 U.S.C. § 2401).

3.5.4 Payments to Reimburse Treasury for Payments in Settlement of Contractor Claims. Upon certification by the Government Accountability Office, the amounts of contractor claims settled pursuant to the Contract Disputes Act of 1978 may be paid to the contractor by the Treasury from the permanent judgment fund. Amounts paid to contractors are reimbursable to the Treasury from the appropriation available for the purpose of the contract or by obtaining additional funds for such purpose. The Treasury will bill the contract Center financial management office. If funds are not available in the proper account to cover invoices received from the Treasury, request additional funds through appropriate channels. Amounts reimbursed to the Treasury must be charged to current funds. Expired funds cannot be used (63 Comp Gen 308 1984).

## 3.6 Assignment of Claims

3.6.1 Assignment of Claims. A contractor may assign moneys due or to become due under a contract if all the following conditions are met:

- (1) The contract specifies payments aggregating \$1,000 or more.
  - (2) The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency.
  - (3) The contract does not prohibit the assignment.
  - (4) Unless otherwise expressly permitted in the contract, the assignment:
    - (a) Covers all unpaid amounts payable under the contract;
    - (b) Is made only to one party, except that any assignment may be made to one party as agent or trustee for two or more parties participating in the financing of the contract; and
    - (c) Is not subject to further assignment.
  - (5) The assignee sends a written notice of assignment together with a true copy of the assignment instrument to the:
    - (a) Contracting officer or the agency head;
    - (b) Surety on any bond applicable to the contract; and
    - (c) Disbursing officer designated in the contract to make payment.
- 3.6.2 Transfer of Assignment. Title 41 U.S.C. § 15 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of, (1) All the contractor's assets; or (2) The entire portion of the assets involved in performing the contract.

# Chapter 4. Federal, State, Local, and Foreign Taxes

## 4.1 Overview

4.1.1 This chapter provides policy on the payment and reporting of Federal Excise Tax and State and Local Tax. It prescribes the policy on the required forms and electronic submission to the Department of Treasury (Treasury) for reporting tax remittance.

## 4.2 Agency Requirements

4.2.1 This chapter prescribes NASA policy for remitting and reporting, Federal, State, Local and Foreign Taxes.

## 4.3 Roles and Responsibilities

4.3.1 Headquarters Office of the General Counsel. The Headquarters Office of the General Counsel is the designated legal counsel for all external contacts on tax issues, including communications with the Department of Justice, other Federal agencies, and any taxing authority.

4.3.2 NASA Shared Services Center (NSSC). NSSC provides IRS Form 1099-MISC, in addition to receipts, to payees that have received certain payments.

## 4.4 Federal Excise Taxes

4.4.1 Federal Excise Taxes (FET). NASA must pay FET on fuel purchases except for exemptions provided by the Internal Revenue Code shown in FAR, part 29. If a contract does not specify that the contract price excludes FET, assume the contract price includes the tax and pay only the contract price (14 Comp. Gen. 44 (1934) and 17 Comp. Gen. 1039 (1938)). If the contract specifically excludes the tax, FET should be added to the contract price by the contractor and billed on the invoice as a separately identified item.

4.4.2 NASA Federal Tax Exemptions. The Assistant Administrator for Procurement has obtained a permit from the Bureau of Alcohol, Tobacco, and Firearms (Treasury) enabling NASA and its contractors to purchase spirits (e.g., specially denatured spirits) tax-free for nonbeverage Government use. Centers can obtain copies of the permit from the Headquarters Office of Procurement.

4.4.2.1. Federal Excise Tax on Motor Gasoline. The Tax Reform Act of 1986 eliminated tax-free sales to exempt entities and organizations. The tax-exempt entities are defined as state (including National Guard) and local governments, the American Red Cross, and nonprofit educational organizations. Tax-exempt entities must pay the tax and file for a refund. Department of Defense entities are not tax-exempt. Disbursing offices must pay the FET on gasoline fuel, but cannot file for a refund.

4.4.3 State and Local Taxes.

4.4.3.1. When the tax is levied on the seller, the Federal Government must pay the tax as part of the

purchase price, unless the taxing authority provides otherwise (37 Comp Gen 772 (1959); 32 Comp Gen 423 (1953); and 24 Comp Gen 150 (1945)). Where the government has, by contract, agreed to reimburse the contractor for taxes paid to a state or municipality, such payments are proper (Comp Gen B-134654, Feb 11, 1958 and FAR part 31). Where there is a valid and binding contract covering the furnishing of supplies or services at fixed unit prices, and the contract contains no provision for the adjustment of such prices in the event of the imposition on the contractor of state taxes applicable thereto, there is no authority for the payment of any taxes over and above the unit price stipulated in the contract (Comp. Gen. B-128346, Aug 8, 1956). Unless specifically stated otherwise in the contract, it is presumed that state and local taxes are included in the contract price (21 Comp. Gen. 719 (1942)). State statutes indicate whether the tax is levied on the seller or the purchaser. Some states accept SF 1094, U.S. Tax Exemption Certificate; others require payment of the tax at time of purchase and provide a means for seeking refunds of the tax. The contracting officer will contact the local state taxing authority to verify if they accept tax exemption certificates. A blanket-type tax exemption certificate may be used to obtain the U.S. Government's exemption from state or local taxes in the case of continuing or numerous purchases from contractors. Generally, NASA Centers shall assert the government's immunity or exemption from taxes whenever it is available.

4.4.3.2. Taxes of \$10 or less. When the total state or local tax on any one tax bill or purchase is \$10 or less, the tax should be paid unless the item can be obtained tax free without issuing SF 1094, U.S. Tax Exemption Form. When a tax exceeds \$10 for a state or local taxing authority, a tax exemption certificate, SF 1094 - Exemption Certificate prepared.

4.4.3.3. Standard Form (SF) 1094. SF 1094, U.S. Tax Exemption Form will be used where exemptions, adjustments, or refunds of state or local sales taxes are allowable on commodities or services purchased for the exclusive use of NASA. A separate form will be issued for each kind of tax (state or local) for which exemption is claimed.

a. The SF 1094 must be fully completed by filling in the blocks provided for the agency name, quantity delivered, amount of tax, whether excluded or included, identification card number, and, where applicable, the license plate or official number of the vehicle for which fuel or oil is delivered. When multiple deliveries are made under a contract, a separate form may be issued for each invoice covering partial deliveries made or the form may be furnished upon completion of the contract. In some cases, such as the purchase of motor fuel and lubricating oil, if considered more practical, the Deputy Chief Financial Officer (Finance) may issue the forms when the invoices are paid. Cross-reference will be made between invoices and the related exemption forms. The itemized statement of the tax in a supplier's invoice may be accepted as the correct amount of the tax in the absence of any facts to the contrary (15 Comp. Gen. 988 (A-69303)).

b. SF 1094 will not be used for: 1) purchases subject only to Federal taxes, 2) purchases on which the tax is \$10 or less, 3) purchases for the operation or maintenance of personally-owned motor vehicles for which mileage has been authorized, 4) purchases for subsistence, if per diem has been authorized, or 5) purchases by employees in official travel status, which were for official use, but were not paid for at time of purchase.

c. Invoices shall be submitted to the appropriate State and Local taxing authority for refund of taxes paid. The amount collected shall be deposited for credit to the appropriations from which the invoices were paid or to the miscellaneous receipt account 803220, Miscellaneous Recoveries and Refunds, Not Otherwise Classified, if the appropriation account cannot be readily identified.

#### 4.4.4 Payments in Lieu of Taxes

4.4.4.1 Charges by state or local governments for services levied on Federal Government entities or

their contractors, which are not imposed on residents or non-Federal, tax-exempt entities, where the cost of the service is borne by the general tax revenues, are in the nature of a tax to which the United States is immune. The placement of the Federal Government in a separate category from other tax-exempt entities for imposing a charge for services is an unreasonable and discriminatory classification on the part of a state or local government and the payment of the charge is unauthorized (50 Comp. Gen. 343 (1970)).

4.4.4.2 A reasonable charge by a political subdivision based on the "quantum" of direct service furnished, and which is applied equally to all property tax-exempt entities, need not be considered a tax against the United States, even though the services are furnished to the tax payers without a direct charge, provided the political subdivision is not required by law to furnish the service involved without a direct charge to all located within its boundaries (50 Comp. Gen. 343 (1970)).

4.4.4.3 Payments are permitted in lieu of taxes to municipalities that have lost tax revenue by transfer of plants to governmental agencies, only when authorized by the Congress. Payments in lieu of taxes are not authorized if the property transferred was never on municipality tax rolls and municipal services had never been furnished (36 Comp. Gen. 592 (1957)).

#### 4.4.5 State and Local Tax Exemptions

4.4.5.1 Evidence of exemption. Evidence needed to establish exemption from State or local taxes depends on the grounds for the exemption claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence may include the following:

- a. A copy of the contract or relevant portion.
- b. Copies of purchase orders, shipping documents, credit-card-imprinted sales slips, paid or acknowledged invoices, or similar documents that identify an agency or instrumentality of the United States as the buyer.
- c. A U.S. Tax Exemption Form (SF1094).
- d. A State or local form indicating that the supplies or services are for the exclusive use of the United States.
- e. Any other State or locally required document for establishing general or specific exemption.
- f. Shipping documents indicating that shipments are in interstate or foreign commerce.

4.4.5.2 Furnishing proof of exemption. If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption, as follows:

- a. Under a contract containing the clause at 52.229-3, Federal, State, and Local Taxes, or at 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments), in accordance with the terms of those clauses.
- b. Under a cost-reimbursement contract, if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.
- c. Under a contract or purchase order that contains no tax provision, if the following occurs:
- d. Requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer; and
- e. Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents to a reduction in the contract price.

4.4.6 Foreign Taxes. U. S. Government purchases in a foreign country generally are not exempt from taxes and custom duties when imposed by the foreign country. The Status of Forces or government tax agreements may provide exceptions. See the FAR, part 29.402.

4.4.7 Environmental Assessments. If a local government levies an environmental assessment and it represents a fee, payment is authorized. If, however, the assessment appears to be a tax and its legality is questionable (31 U.S.C. § 3529), payment is not authorized. Payment under protest should not be made. Legal advice should be obtained from the Center office of counsel regarding payment of assessments by state and local governments.

4.4.8 Statement for Recipients of Miscellaneous Income, TD Form 1099-MISC:

a. General. At the end of each calendar year, disbursing offices are required to report to the IRS certain payments. These are payments made to noncorporate contractors for services and to corporations providing medical and health care services, totaling \$600 or more per contractor or royalties of \$10 or more in any calendar year (26 U.S.C. § 6041 and FAR 52.204.3).

b. NASA Centers must provide these recipients with a TD Form 1099-MISC. This form must be provided to payees by January 31 following the year of payment. Instructions and specific requirements on the preparation of and submission of the TD Form 1099-MISC are available from the IRS at <http://www.irs.gov/irs-pdf/i1099.pdf>.

# Chapter 5. Contractor Debt Collection

## 5.1 Overview

5.1.1 This chapter addresses National Aeronautics and Space Administration (NASA) policy related to the collection of debts owed to the NASA by contractors. Such debt shall be promptly and aggressively collected, with follow-up action(s) taken as necessary, to recover outstanding debts. This chapter issues policy for the collection and recovery of those debts that are owed by contractors, vendors, assignees, and business entities, and the transfer of eligible delinquent debts to the Department of Treasury (Treasury) for collection and cross-servicing.

## 5.2 Agency Requirements

5.2.1 NASA's policy is to collect debts owed to the Agency. Uncollectible eligible debts of up to 180 days delinquent shall be transferred to the Treasury as soon as a determination is made that, despite the Agency's due diligence to recover debts, additional efforts will not result in the recovery of these debts. NASA may also write-off debt referred to Treasury as currently not collectable. Criteria for the write-off are found in NPR 9610.1 and NPR 9635.1. Referral of debts to the Treasury shall be made in accordance with terms of agreement between NASA and the Treasury.

## 5.3 Roles and Responsibilities

5.3.1 NASA Agency Office of the Chief Financial Officer (OCFO) shall:

- a. Establish and maintain policies for the timely collection of contractor debt in accordance with applicable laws and Treasury guidance.

5.3.2 The Deputy Assistant Administrator for Procurement shall:

- a. Establish and maintain contractual policies for the timely identification of amounts owed by contractors, and issuance of demand letter for repayment.
- b. Monitor compliance with contractor debt collection policies and procedures.

5.3.3 NASA Shared Services Center (NSSC) shall:

- a. Identify amounts owed by contractors.
- b. Prepare and issue demand letters to contractors.
- c. Provide a copy of the demand letter and any associated documentation to the Center OCFO upon request.
- d. Record accounts receivable based on demand letters received from the contractual offices.
- e. Maintain records of receivables and take appropriate follow-up action on delinquent receivables.

5.3.4 Center Contracting Officers shall:

- a. Identify amounts owed by contractors and notify the NSSC.

## 5.4 Debt Determination and Collection

5.4.1 Debt Collection Initiated by the Contracting Officer. When indication of a contract debt arises due to causes as determined by FAR 32.602, the contracting officer shall determine promptly whether an actual debt is due to the Government and the amount. When a debt is determined due, the contracting officer will provide at a minimum the following information to the NSSC.

- a. The name and address of the contractor.
- b. The contract number, if any.
- c. A description of the debt.
- d. The amount of debt and the appropriation to be credited.
- e. The date the debt was determined.

5.4.2 The Contracting Officer shall keep the NSSC aware of all notices issued or received, that affect the NASA's accounting records. Communication of the foregoing activity shall be performed in the accounting month that the activity occurred. These actions will ensure that receivables are established, aged, collected and written-off in the accounting records and identified in reports.

5.4.3 Collection. The primary responsibility for determining the amount and ensuring collection of contract debt is with the NSSC for most types of contract debts. It is the NSSC's responsibility to initiate action to make the collection from the contractor. The NSSC shall act judiciously to make recovery of debt upon receipt of an official request, including payment dates, amounts due from the contractor, and provision of a copy of the contract from the contracting officer or other authorized official. Any checks from contractors for the payment of debt should be immediately sent to the NSSC with a request for confirmation of receipt of payment.

5.4.4 Demand for Payment. Written demand for repayment of debts shall be made promptly, and in terms that inform the debtor of the consequences of failing to cooperate with NASA to resolve the indebtedness. Priority shall be given first to voluntary repayment prior to initiating involuntary measures for recovery of debts. Repayment measures include one or more of the following activities: internal debt recovery processes by NASA (through installment agreements and internal administrative offsets), and/or transfer to the Treasury for cross-servicing. Transfer of debts to the Department of Justice for litigation also may be required. NSSC shall follow the procedures established in 14 CFR 1261.407 in making demands for payment.

5.4.5 Internal Administrative Offsets. Recover debts internally within NASA, to the extent practicable, by voluntary repayment of the debt by the debtor or by administrative offset(s) of other payments owed to the contractor. The contractor shall be required to liquidate debts either by payment in a lump sum on demand, or by credit against unpaid bills due the contractor, unless an installment agreement has been entered into or a deferment of collection has been approved (see FAR 32.606(d)). After 30 days have elapsed since the initial demand letter was mailed and no payment has been received, offset the amount of a contractor's indebtedness against other monies that are owed the contractor.

5.4.6 Offset as a Deduction on a Public Voucher. FAR subpart 32.611 allows for offsetting contractor payments to liquidate debts owed by the contractor if an explanation is given to the contractor. Offsets (that include appropriate administrative charges) shall be made against the same contract that gave rise to the debt, provided that payments are scheduled under that contract. Effect offsets against amounts due the contractor under other contracts only when offsets against the contract that gave rise to the debt cannot be accomplished. The public voucher must be approved

and the accounting classification charged for the total amount being settled with no regard for the deduction being applied.

**5.4.7 Credit Memoranda.** The demand letter shall indicate that a credit memorandum is not an acceptable means for liquidating indebtedness; however, as an exception, a credit memorandum may be accepted under special circumstances and only when there is a payable invoice to which the credit can be applied. For example, a credit memorandum may be acceptable when a contractor is the original discoverer of the error that led to the indebtedness and voluntarily submits a credit memorandum to the disbursing office without having received a demand letter. The contractor should furnish the disbursing office, upon request, an invoice number, date, and the amount of the debt to be offset against the invoice, according to the credit memorandum.

**5.4.8 Payment Schedule.** Whenever possible, payment, including deferred payment, of debts owed the government by contractors shall be made in one lump sum amount. When a debtor contractor is able to establish sufficient justification, a series of installment payments may be approved that will ensure liquidation of the debt within a reasonable period of time. According to 31 CFR 901.8, when feasible, installment payments should be sufficient in size and frequency to liquidate the government's claim within 3 years. Interest and administrative fees shall be computed and assessed for each payment of outstanding debt.

**5.4.9 Deferments and Disputes under the Contract Disputes Act.** Under the Contract Disputes Act of 1978, a contractor may appeal a decision of indebtedness to the Armed Services Board of Contract Appeals or through the United States court system. The contractor may request, in writing, for a deferment of debt payment until the appeal is decided (see FAR subpart 32.613). Although a contractor may use the term "deferment" when requesting postponement of a payment, a contractor's request for a deferment for collection of indebtedness on a contract associated with an appeal should be sent to the contract financing office by certified mail, within 3 work days from the date of receipt of that request (see FAR subpart 32.613). The accounting office cannot approve or deny such a request for a deferment. When a disbursing office or the accounting office receives a request for deferment of a debt from a contractor in association with an appeal, the office receiving the request shall send the request within 3 work days to the appropriate contract financing office.

**5.4.10 Interest Rate.** The Current Value of Funds Rate is used to calculate interest on overdue Federal Government receivables (I TFM 6-8040.40) on contract payments. Interest charged is simple interest at the rate in effect at the time the debt becomes overdue. The rate of interest remains fixed for the duration of the indebtedness (I TFM 6-8025.20). See TFM Chapter 6-8000 for more information

**5.4.11 Bankruptcy.** In accordance with the FAR subpart 52.242-13, "Bankruptcy," should the contractor enter into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail, or electronic commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification shall be furnished within 5 days of the initiation of the proceedings relating to bankruptcy filing. This notification should include: date on which bankruptcy petition was filed, identity of court in which the bankruptcy petition was filed, listing of government contract numbers and contracting officers for all government contracts with this contractor against which final payment has not been made, FAR clause 52.242-13 states that this obligation remains in effect until final payment under the contract(s) is made.

**5.4.12 Penalty Charges.** Creditor organizations (i.e., organizations to which a debt is owed) shall assess a penalty charge not to exceed 6 percent per annum on any debt principal that is delinquent beyond 90 days. Penalty charges shall accrue from the date the principal amount owed becomes delinquent. Amounts received from a contractor or business entity are to be deposited in the

## Treasury Receipt Account 1099, "Fines, Penalties, and Forfeitures, Not Otherwise Classified."

5.4.13 Administrative Costs. Administrative costs relate to only delinquent debts (i.e., debts not paid for 30 or more days from the date the demand letter was mailed). Administrative costs are assessed to cover expenses incurred in the recovery of the delinquent debts. The cost of sending an initial demand letter would not be included when calculating administrative costs because that expense is incurred whether or not the debt becomes delinquent. In contrast, costs associated with the calculation of interest and forwarding of the debt to the accounting office are necessitated only because the debt is not paid when due (i.e., within 30 days after the date from which the notice is mailed when interest accrues) and subsequently becomes delinquent. Therefore, costs associated with these actions are included in the calculation of administrative costs. Administrative charges must be based on actual costs, or on an average based on actual costs. The costs may not arbitrarily be established.

# Appendix A. Definitions

**A.1 Administrative Approval.** Administrative approvals are written statements by civil service employees attesting to the facts of an individual transaction from personal knowledge.

**A.2 Assignment.** Assignment is defined as a transfer of assignment of any part of a claim against the United States Government or of an interest in the claim or the authorization to receive payment for any part of the claim. An assignment maybe made only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued.

**A.3 Claims.** A claim is a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

**A.4 Contract.** Contract is defined as a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. § 6301, et seq. For discussion of various types of contracts, see FAR Part 16.

**A.5 Central Contractor Registration (CCR) database.** The Central Contractor Registration database is the primary Government repository for Contractor information required for the conduct of business with the Government.

**A.6 Cross-Servicing.** The process whereby Federal agencies refer delinquent debts to Treasury for collection.

**A.7 Debt and Claim.** The terms, "debt" and "claim," as used in this chapter are synonymous and interchangeable. They refer to any amount of money, funds, or property that has been determined by an agency official to be due to the United States from any person, organization, or entity, except another Federal agency.

**A.8 Debt Collection Center - Private collection agency.** A private sector company specializing in the collection of delinquent debt. A listing of agencies awarded Treasury debt collection contracts is provided on <http://fms.treas.gov/debt/pca.html>.

**A.9 Debts Eligible for Cross-Servicing.** Debts eligible for cross-servicing by Treasury include all debts that are eligible for transfer to Treasury except debt that is:

- a. In bankruptcy;
- b. Owed to Federal agencies of foreign governments;

c. In an administrative appeals process; and

d. In foreclosure.

**A.10 Debts Eligible for Transfer (or mandatory referral).** Debts "eligible for transfer to the Treasury" include debts, except as defined below, that have been delinquent for at least 60 days after the last demand letter has been sent, for which Treasury may take appropriate action to service, collect, or compromise the debt or to suspend or terminate collection action. The Debt Collection Act requires the referral to Treasury of debts that are over 180 delinquent.

**A.11 Debts Not Eligible for Transfer (or mandatory referral).** Debts that are "not eligible for transfer to the Treasury" includes debt:

a. In litigation or foreclosure.

b. To be disposed of under an approved asset sale program.

c. Referred to a private collection contractor for a period of time acceptable to the Treasury.

d. At a debt collection center for a period of time acceptable by the Treasury.

e. Will be collected under internal offset procedures within 3 years after the debt first became delinquent.

f. May be deemed exempt by the Treasury in accordance with 31 CFR 285.12 based on a determination that the exemption is in the best interest of the United States.

**A.12 Delinquent Debt.** Delinquent debt refers to a debt that has not been paid by the due date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement).

**A.13 Electronic Funds Transfer.** Electronic Funds Transfer (EFT) is define as any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with 31 U.S.C. § 3332 and implementing regulations at 31 Code of Federal Regulations (CFR) 208, "Management of Federal Agency Disbursements," the term "electronic funds transfer" includes a Governmentwide commercial purchase card transaction.

**A.14 Invoice.** Invoice is define as a contractor's bill or written request for payment under the contract for supplies delivered or services performed (also referred to as a voucher).

**A.15 Receiving Report.** Receiving report is written evidence that indicates Government acceptance of supplies delivered or services performed (see Subpart 46.6). Receiving reports must meet the requirements of 32.905(c).

**A.16 Responsible Government Agency.** The Responsible Government Agency is the Federal Office that is required by statute or regulation to pay a specific type of claim.

**A.17 Surety.** A surety is an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows: 1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond, 2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others, and 3) A co-surety is one of two or more

sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

**A.18 Treasury Offset Program (TOP).** A centralized offset program, administered by the FMS's Debt Management Services (DMS), and designed to collect delinquent debt owed to Federal government agencies and states. A Treasury disbursing official offsets the payment, in whole or in part, to satisfy the debt, to the extent legally allowed.

# Appendix B. Contract Payment Records

## B.1 Contract Payment Records

B.1.1 Contract payment records shall include:

- a. Contract number
- b. Date of contract
- c. Anticipated completion date
- d. Total cost per contract
- e. Cost billed to date (include current invoice)
- f. Percent of contract billed
- g. Total fee per contract
- h. Total fee billed to date
- i. Billing period covered
- j. Total contractual reimbursement less fee
- k. Total fee paid to date
- l. Exceptions taken on NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved
- m. Withholding
- n. Number of last invoice paid

# Appendix C. Description of Relevant Authorities and Applicable Documents

## C.1 Authority

C.1.1 28 U.S.C. § 2415, Time for Commencing Actions Brought by the United States. This code limits the time for commencing actions brought by the U. S. based upon any contract. The claim must filed within 6 years after the right of action accrues or within 1 year after final decisions have been rendered by the required administrative proceedings, whichever is later.

C.1.2 Assignment of Claims Act, 41 U.S.C. §15, 31 U. S. C. § 3727, and Federal Acquisition Regulation (FAR) 32.802. Assignment of Claims Act authorizes assignments to banks, trust companies, or other financing institution (including Federal lending agencies) of monies due, or to become due, under Government contracts totaling \$1,000 or more.

C.1.3 Debt Collection Improvement Act of 1996, Public Law 104-134, and the revised Federal Claims Collection Standards Regulation of 2000. These laws centralized the Governmentwide collection of delinquent debt and gave Treasury significant new responsibilities in this area. The Financial Management Service (FMS) is responsible for Treasury's implementation of the debt collection provisions of the Debt Collection Improvement Act.

C.1.4 Contractor Disputes Act of 1978, Public Law 95-563 (50 U.S.C. § 1431 -1435). Allows Federal Government contractors to sue the United States Government for monetary damages related to their contractual dealings.

C.1.5 Improper Payments Information Act of 2002, Public Law 107-300. This Act requires Federal agencies to review and identify all Programs and activities that may be susceptible to improper payments, report estimates of the amounts of possible improper payments, and submit the report to Congress.

C.1.6 Office of Federal Procurement Policy Act of 1974, Public Law 93-400, as amended by Public Law 96-83 Established to provide overall direction for Government-wide procurement policies, regulations and procedures and to promote economy, efficiency, and effectiveness in acquisition processes.

C.1.7 Prompt Payment Act, 5 CFR 1315. This Act requires that Federal agencies make payments in a timely manner and imposes an interest penalty on late payments.

C.1.8 Management of Federal Agency Disbursements, 31 CFR 208. 31 CFR 28 requires that Federal agencies make all payments using electronic funds transfer except as provided for in the regulation.

C.1.9 Collections by Administrative Offset, 31 Code of Federal Regulations (CFR) Part 901.3 These provisions implement the statutory requirement for mandatory referrals of eligible debts to the Treasury.

C.1.10 21 Comp. Gen. 719 (1942). This decision states that unless specifically stated otherwise in the contract, it is presumed that state and local taxes are included in the contract price.

C.1.11 Comp. Gen. B-134654, Feb 11, 1958. Results from this decision set forth cases where federal, state, territorial, municipal and other local taxes (excise, sales, use, compensating, occupational, gross income, gross receipts, et cetera) are levied or based on (or payable by the

contractor in respect of) the charges listed in the attached catalog, amounts will be added to such charges equivalent to such taxes. In the event such additional charges are made, the government is to pay such increases in charges equal to such taxes FAR Part 31.

C.1.12 Comp. Gen. B-128346, Aug 8, 1956. Comptroller General decision results state, where there is a valid and binding contract covering the furnishing of supplies or services at fixed unit prices, and the contract contains no provision for the adjustment of such prices in the event of the imposition on the contractor of state taxes applicable thereto, there is no authority for the payment of any taxes over and above the unit price stipulated in the contract.

C.1.13 Comptroller General Procedures (Comp. Gen.) (e.g., 37 Comp. Gen. 772 (1959)), Provides guidance on appropriation law, the treatment of laws related to expenditure of Federal funds.

C.1.14 37 Comptroller General Procedures (Comp. Gen.) 772 (1959), 32 Comp. Gen. 423 (1953), 24 Comp. Gen. 150 (1945). These decisions states, when the tax is levied on the seller, the Federal Government must pay the tax as part of the purchase price, unless the taxing authority provides otherwise.

C.1.15 Federal Acquisition Regulation (FAR), Subpart 29.2 Federal Excise Taxes. Subpart 29.2 provides guidance on the allowance or exemption of taxes levied on the sale or use of particular supplies or services.

C.1.16 FAR Subpart Part 29.3 State and Local Taxes. Subpart 29.3 provides policy on the allowance or exemption of taxes levied on purchases and property.

C.1.17 FAR, Part 31, Contract Cost Principles and Procedures. Part 31 of the FAR contains cost principles for the pricing of contracts and the determination, negotiation, or allowance of cost when required by a contract clause.

C.1.18 FAR Part 32, Contract Financing. Part 32 of the FAR provides the primary regulation for use in contract financing and other payment matters.

C.1.19 FAR Part 33.102(b). This regulation requires contracting officers to consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency or the Government Accountability Office.

C.1.20 The Federal Claims Collection Standards (FCCS). The FCCS prescribe standards Federal agencies use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, unless specific agency statutes or regulations apply to such activities or, as provided for by U.S.C. Title 11 when the claims involve bankruptcy.

C.1.21 Treasury Financial Manual (TFM) 4-2000, Payment Issue Disbursing Procedures. TFM 4-2000 provides direction on issuing payment schedules.

C.1.22 Treasury Financial Management Regulations (TFM), Chapter 6-8000. This chapter establishes procedures for Government agencies to follow to ensure prudent cash management practices when developing and implementing regulations, systems, and instructions.

C.1.23 NASA Policy Directive (NPD) 9010, "Financial Management". NPD 9010 is NASA's policy to comply with the Chief Financial Officers Act of 1990, which states that the Agency Chief Financial Officer (CFO) directs, manages, and provides policy guidance and oversight of Agency financial management personnel, activities, and operations.

## C.2 Applicable Documents

C.2.1 NASA FAR Supplement, Part 1832 - Contract Financing. The FAR Supplement provides internal Agency guidance for use in the acquisition of supplies and services.